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April 14, 2005

BELLSOUTH
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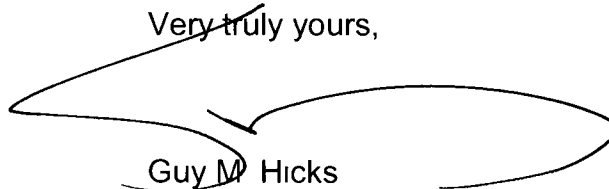
Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and NuVox Communications, Inc.*
Docket No. 04-00133

Dear Chairman Miller

Enclosed are fifteen copies of BellSouth's *Response* to NuVox's *Motion to Reschedule Date for Oral Argument*. Copies of the enclosed are being provided to counsel of record

Very truly yours,



Guy M Hicks

GMH ch

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.*

Docket No. 04-00133

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
IN OPPOSITION TO NUVOX COMMUNICATIONS, INC.'S
MOTION TO RESCHEDULE DATE FOR ORAL ARGUMENT

BellSouth Telecommunications, Inc ("BellSouth") respectfully submits this *Response in Opposition to NuVox Communications, Inc.'s ("NuVox") Motion to Reschedule Oral Argument*. NuVox requests that oral argument be postponed from April 18 to May 2, 2005 or to "the earliest date that is acceptable to the Authority and that allows both parties to be represented by their counsel of choice" ¹

Almost a year ago, on May 4, 2004, BellSouth filed its *Complaint* requesting that the Tennessee Regulatory Authority ("Authority") order NuVox to allow an audit of NuVox's records to verify the type of traffic being placed over combinations of loop and transport network elements, also known as Enhanced Extended Links or "EELs". The parties' interconnection agreement requires NuVox to allow the audit to go forward.² BellSouth requested that the *Complaint* be handled on an expedited basis, based on the fact that the Authority had previously ruled that similar interconnection agreement provisions allow for the audit of "EELs". See *Report and Recommendation of Pre-Hearing Officer* entered February 13, 2004 in Docket No 02-01203, *In Re. Enforcement of Interconnection Agreements between BellSouth Telecommunications, Inc and*

¹ See NuVox Motion Motion at page 1

² See Section 10.5.4 of Attachment 2 of the Interconnection Agreement

*ITC^DeltaCom Communications, Inc. and XO Tennessee, Inc*³ Since that time, NuVox has tried a number of strategies to delay the audit

Recently, the independent auditing firm, KPMG, LLP, undertook an audit of NuVox's EEL circuits in Georgia. While KPMG's report has not been finalized because NuVox has refused to provide KPMG with an affirmation that it provided KPMG with all relevant materials in NuVox's possession, "high-level" results of the audit were provided to BellSouth in a read-out session with KPMG. Based on those high-level discussions, BellSouth anticipates that the Georgia Audit will confirm substantial non-compliance (and possible misrepresentation) regarding the circuits inspected, as well as an inadequate control and record-keeping structure established and/or maintained by NuVox in support of the certifications that were made to justify the circuit conversions.

Based on these high-level audit results from Georgia, it appears that NuVox has a poor compliance record related to converted circuits. Under the circumstances, BellSouth is now faced with substantial and growing losses in the continued delay in its ability to audit NuVox's Tennessee converted circuits. Substantial dollars are at stake.⁴

NuVox argues in its *Motion* that delay of the oral argument will not result in the delay of the requested audit. That is incorrect. NuVox is opposing the audit and will not allow the audit to go forward in Tennessee until and unless it is ordered by the Authority to do so. The Authority will obviously not enter such an order until it has heard oral argument. Therefore, any delay in the oral argument will result in a delay of the audit.

³ While BellSouth does not agree with certain aspects of the Hearing Officer's *Report and Recommendation*, including the finding that the DeltaCom and XO audits should be limited to converted EELs, BellSouth is only seeking to audit NuVox's converted EELs. BellSouth is not seeking to audit NuVox's new EELs at this time.

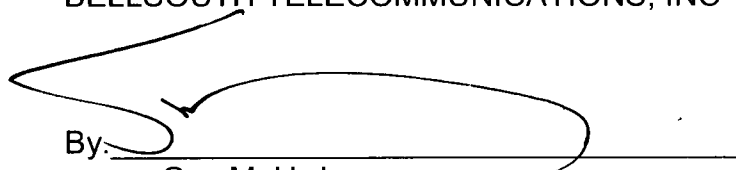
⁴ See *Affidavit of Jerry Hendrix*, of BellSouth, filed April 13, 2005 with the Authority.

NuVox further claims that its preferred counsel will not be available in Tennessee on April 18 because of a hearing scheduled to begin on April 19 in Alabama. The hearing referred to by NuVox is the "4 CLEC" Arbitration, which is being tried for the fifth time in Alabama.⁵ BellSouth submits that NuVox's local counsel in Tennessee or another lawyer from NuVox's law firm in Washington D C could handle the oral argument on April 18 in Tennessee. Alternatively, NuVox's local counsel in Alabama could handle witness preparation in Alabama on April 18, and NuVox's preferred counsel could make the oral argument in Tennessee on that same date and return that afternoon to Alabama for the Alabama hearing, which is scheduled to begin on Tuesday, April 19.

If the Authority or Hearing Officer are inclined to grant NuVox's *Motion* (which BellSouth opposes), BellSouth requests that the oral argument not be rescheduled any later than Monday, May 2, 2005.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC

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⁵ This case was arbitrated in Tennessee on January 25-27, 2005.

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2005, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☒ Overnight

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